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April 12, 2000

VIA HAND DELIVERY

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Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
445 12th Street, S.W., Counter TW-A 325
Washington, D.C. 20554

APR 12 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RE: Joint February 28, 2000 *ex parte* Proposal to Limit the Use of the Enhanced Extended Link ("EEL"), CC Docket 96-98

Dear Ms. Salas:

Enclosed please find for filing an original plus one copy of VoiceStream Wireless Corp.'s letter to the Chairman and Commissioners in the above-captioned proceeding.

Also enclosed is an additional copy of the letter to be date-stamped and returned to our offices via the awaiting messenger.

Thank you for your assistance. Should you have any questions, please contact the undersigned.

Sincerely,

Douglas G. Bonner
Sana D. Coleman

Enclosures

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April 12, 2000

VIA HAND DELIVERY

The Honorable William E. Kennard, Chairman
Federal Communications Commission
445 12th Street, S.W., Room 8B-201
Washington, D.C. 20554

The Honorable Susan Ness, Commissioner
Federal Communications Commission
445 12th Street, S.W., Room 8B-115
Washington, DC 20554

The Honorable Harold W. Furchtgott-Roth, Commissioner
Federal Communications Commission
445 12th Street, S.W., Room 8A-302
Washington, DC 20554

The Honorable Michael K. Powell, Commissioner
Federal Communications Commission
445 12th Street, S.W., Room 8A-204
Washington, DC 20554

The Honorable Gloria Tristani, Commissioner
Federal Communications Commission
445 12th Street S.W., Room 8C-302
Washington, DC 20554

Re: Joint February 28, 2000 *ex parte* Proposal to Limit the Use of the Enhanced
Extended Link ("EEL"), CC Docket 96-98

Dear Chairman Kennard and Commissioners:

AT&T Wireless Corporation ("AT&T Wireless"), United States Cellular Corporation ("US Cellular"), and VoiceStream Wireless Corporation ("VoiceStream") (collectively, the "undersigned CMRS carriers") oppose the *ex parte* February 28, 2000 letter filed by Bell Atlantic, BellSouth, GTE, SBC, US West, and a few competitive local exchange carriers ("CLECs"), Intermedia, Time Warner Telecom, Focal Communications, and Winstar ("ILEC-CLEC *ex parte*"). AT&T Wireless constructs and operates CMRS systems throughout the United States.

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US Cellular, the nation's eighth largest wireless carrier, provides wireless service to more than 2.6 million customers in 145 markets and owns interests in 35 additional markets. VoiceStream and its affiliates construct and operate PCS systems using Global System for Mobile Communications ("GSM") technology throughout the United States.¹

The undersigned CMRS carriers use UNEs and UNE combinations to build their networks, including connections to their cell sites. CMRS carriers, however, have been forced to purchase such connections as tariffed special access circuits, not UNEs. While a number of wireline competitors have been heard from on this subject,² the undersigned CMRS carriers urge the Commission not to overlook the interests of CMRS carriers in obtaining nondiscriminatory access to UNE combinations, including EELs and transport combinations.

Section 251(c)(3) of the Telecommunications Act of 1996 ("1996 Act") ensures that all requesting telecommunications carriers are entitled to non-discriminatory access to unbundled network elements of incumbent LECs for the provision of "telecommunications services." The Commission concluded in the *Local Competition First Report and Order* that CMRS carriers "meet the definition of 'telecommunications carrier' because they are providers of telecommunications services as defined in the 1996 Act and are thus entitled to the benefits of section 251(c), which include the right to request interconnection and obtain access to unbundled elements at any technically feasible point in an incumbent LEC's network."³ The undersigned CMRS carriers, therefore are telecommunications carriers providing telecommunications services as defined under the 1996 Act.⁴ In short, they are no less entitled to unbundled access to network elements, or existing combinations of network elements, than wireline CLECs.

¹On February 14, 2000, the Commission granted the transfer of control applications filed by VoiceStream and Omnipoint, transferring control of Omnipoint's licenses and authorizations to VoiceStream. *In re Applications of VoiceStream Wireless Corporation or Omnipoint Corporation, Transferors, et al.*, File Nos. 0000016354, *et al.* DA 99-1634 (rel. Feb. 15, 2000). On February 24, 2000, the shareholders of VoiceStream Wireless Corporation, Omnipoint Corporation and Aerial Communications, Inc. ("Aerial") overwhelmingly approved the mergers between VoiceStream and Omnipoint, and between VoiceStream and Aerial. On March 30, 2000, the Commission granted the transfer of control applications filed by VoiceStream and Aerial, transferring control of Aerial's licenses and authorizations to VoiceStream. *In re Applications of Aerial Communications, Inc., Transferor, and VoiceStream Wireless Holding Corporation, Transferee, et al.*, WT Docket No. 00-3, File No. CWD 98-89 (rel. March 31, 2000). With the completion of these two mergers, VoiceStream and its affiliates will own licenses to provide service to an addressable market of 220 million people, and will be the largest GSM operator worldwide.

²CompTel, ALTS and MCI WorldCom, Inc. are among those who have submitted ex parte letters to the Commission on this subject on behalf of interested competitive local exchange carriers.

³ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98 (rel. Aug. 8, 1996) ("*Local Competition First Report and Order*"), ¶1993.

⁴*See*, 47 U.S.C. § 153 (44) and (46).

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Unfortunately, a narrow cross-section of wireline providers --major ILECs and a few CLECs-- have proposed in an *ex parte* letter that major restrictions be placed upon the availability of combinations such as the EEL. If that suggestion is heeded, this would vitiate Section 251(c)(3)'s command, and this Commission's recognition in the *Local Competition First Report and Order*, that unbundled access to ILEC network elements -- whether used individually or in combination -- should be available to all telecommunications carriers, including CMRS carriers, without use restrictions.

The options proposed in the ILEC-CLEC *ex parte* letter appear, whether or not intentionally, to exclude CMRS carriers from access to UNE combinations such as the EEL. For instance, Options 1 and 2 require one end of the EEL to terminate to a carrier's collocation arrangement. CMRS carriers, however, do not collocate in ILEC central offices, because they have constructed their own facilities and switches. As a result, these "options," if adopted, could foreclose use of UNE combinations by CMRS carriers.

Option 3 includes language that, if adopted, also may serve to limit CMRS carriers' use of UNE combinations. In particular, the requirement that at least 50% of the traffic be local as "measured based on the incumbents local exchange area," is particularly and unreasonably limiting to CMRS carriers. As the Commission has previously and properly recognized, CMRS carriers have MTA-wide local calling areas that are not limited to the ILECs' local calling areas. Any attempt to "straightjacket" CMRS carriers with landline local calling areas would improperly and discriminatorily restrict CMRS access to unbundled network elements or combinations thereof guaranteed under Sec. 251(c)(3) of the 96 Act.

Similarly, a requirement that the facility also have "at least 33% local *voice* traffic" is a disturbing infringement upon a carrier's ability to carry data traffic alone, or a predominant amount of data traffic as opposed to voice traffic. The already unreasonable restriction becomes even more onerous if "voice" is defined as only analog transmission of human speech. New wireless technologies will convert most voice traffic into data packets which is indistinguishable from other data services.

In short, all the "options" proposed would have the practical effect of denying CMRS carriers access to UNE combinations that are key to their network. As such, these proposed limitations are discriminatory on their face and would have the improper result of foreclosing increased competition by CMRS carriers.⁵

⁵ VoiceStream has requested the availability of the EEL from at least one ILEC signatory by letter in mid-February 2000, approximately the same time when the *UNE Remand Order* became effective on February 17, 2000. One month later, the ILEC has still not responded one way or the other. One ILEC's website has posted EEL guidelines (collocation required), and an EEL request form to request conversion of special access circuits to EELs, which by their terms are made available only to CLECs that meet the ILEC's restrictions. CMRS carriers would be ineligible for the EEL under these guidelines and certification terms as written. See, "Certification for Conversion of Special

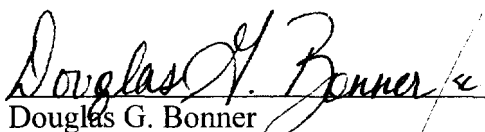
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April 12, 2000

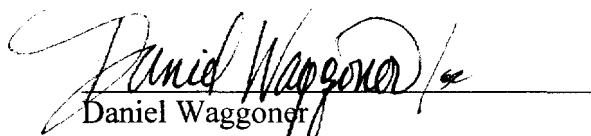
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Application of such proposed restrictions thus would block efficient use of combinations of UNEs, currently purchased as special access by competitors of the incumbents and entirely prevent their use by the class of CMRS competitors. As CompTel, ALTS and MCI WorldCom, Inc. have already clarified, the February 28 ILEC-CLEC *ex parte* is not representative of the broader CLEC industry. The undersigned CMRS carriers wish to clarify that the February 28 ILEC-CLEC *ex parte* letter not only fails to include a single CMRS carrier, but fails to recognize the appropriateness of access to UNE combinations by the entire CMRS industry. The undersigned CMRS carriers therefore strongly object to the proposal as being discriminatory to CMRS carriers, and urge the Commission to reject it.

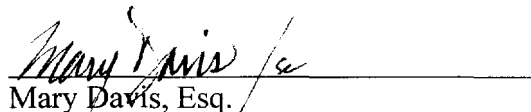
Sincerely yours,



Douglas G. Bonner
Counsel for VoiceStream Wireless Corporation



Daniel Waggoner
Davis Wright Tremaine LLP
Counsel for AT&T Wireless Corporation



Mary Davis, Esq.
Manager-External Affairs
United States Cellular Corporation

cc: Kathy Brown
Dorothy Attwood

Access Services to Expanded Extended Loop ("EEL") Arrangements under Interconnection Agreement..." located at: http://www.BellAtlantic.com/wholesale/html/clec_00/02_17x.htm (researched on 3/15/00)("1. The undersigned Competitive Local Exchange Carrier ("CLEC") certifies that it provides a significant amount of local exchange traffic" as defined by Bell Atlantic, largely consistent with Options 1 and 2 of the ILEC February 28, 2000 *ex parte* letter. Option 3 is not spelled out. An audit requirement to be conducted by Bell Atlantic is also provided.



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